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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,468	11/27/2006	Paolo Morazzoni	2503-1225	5191

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EXAMINER	
MI, QIUWEN	
ART UNIT	PAPER NUMBER
1655	
MAIL DATE	DELIVERY MODE
01/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/587,468	MORAZZONI ET AL.	
	Examiner	Art Unit	
	QIUWEN MI	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *23-42 and 46* is/are pending in the application.

4a) Of the above claim(s) *43-45* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *23-42 and 46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 July 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/27/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 23-46 are pending.

Applicant's election without traverse of Group I, claims 23-42, and added new claim 46, which is drawn to elected Group I, in the reply filed on 9/25/2008 is acknowledged.

Claims 43-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/14/2008. Claims 1-22 are cancelled.

Claims 23-42 and 46 are examined on the merits.

Specification/Abstract Objections

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the instant case, Applicant is required to delete "The invention is directed to" on line 1 of the Abstract to be more clear and concise. The first letter of "the" in line 1 should be capitalized after the deletion.

Claim Objections

Claims 23-34 are objected to because of the following informalities:

Claim 23 recites "phopholipid" in line 4, which is incorrect. The correct spelling should be "phospholipid"

Claim 25 recites "phospatidylserine" in line 1, which is incorrect. The correct spelling should be "phosphatidylserine".

All other cited claims depend directly or indirectly from objected claims and are, therefore, also, objected for the reasons set forth above.

Claim Rejections –35 USC § 112, 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23-42 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 23 and 35 recite "a method for the enhancement of cognitive function and mental fatigue…", and it is not clear whether Applicant is claiming "a method for the enhancement of mental fatigue or "a method of reducing mental fatigue".

Claim 42 recites "The method according to claim 40, further comprising an additionally active compound that is complexed grape seed extract." It is noted that methods cannot further comprise an additional active compound (they can only further comprise additional step(s)), and thus the claim is unclear. Also, it is not clear what Applicant means by "complexed grape seed

extract", is "complexed grape see extract" simply grape seed extract that is in with Ginkgo complexed with phosphatidylserine as in claim 36, or is it something specific on its own "complexed grape seed extract" as opposed to regular grape seed extract?

Therefore, the metes and bounds of claims are rendered vague and indefinite. The lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 23-42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable Summers (US 6733797), in view of Loew (Value of Ginkgo biloba in treatment of Alzheimer dementia, Wiener medizinische Wochenschrift (1946), (2002) Vol. 152, No. 15-16, pp. 418-22. Ref: 40).

Summers teaches a neurochemical formulation comprising a supplement for improving function of neurons, improving memory and cognitive abilities (thus a medicament). Summers

teaches a health supplement composition for mammals for improving memory and cognitive abilities comprising: 60 mg ginkgo biloba extract, 22.5 mg phosphatidyl serine (thus 82.5 mg per day), grape pip (proanthocyanidins), manganese, calcium (thus minerals), vitamin B1-B6, vitamins A, C, and E, 675 mg phosphatidyl choline (phospholipid) (col 4, lines 35-40), etc, wherein said use on mammals comprises prevention or treatment of illnesses or conditions selected from the group consisting of a condition requiring memory improvement, cognitive improvement, AIDS-associated dementia, Alzheimer's disease, benign senile forgetfulness, Down's syndrome-associated dementia, Lewy body dementia, multi-infarct dementia, multiple sclerosis, Parkinson's disease-associated dementia, tardive dyskinesia, Wernicke-Korsikoff syndrome, and alcoholism-associated dementia (claim 1; col 8, Table 1). Summers also teaches the composition is administerable via an oral application method (claim 3), and Summers further teach health supplement being ingested as tablets (col 1, lines 25-37). Summers further teach that these certain combinations of substances are found to give improved nervous system function with improved cognitive function and mental energy (thus treating mental fatigue) (col 6, lines 50-55). At last Summers teach the composition may contain 0 mg to 300 mg phosphatidylserine (col 4, lines 35-40), 0 mg to 16,000 mg of phosphatidylcholine, and 0 mg to 180 mg of ginkgo biloba (col 4, liens 57-63), thus phosphatidylserine, phosphatidylcholine (other phospholipid), and ginkgo biloba extract are result-effective variables for treating Alzheimer's disease.

Summers does not explicitly teach that Ginkgo biloba extracts contains ginkgo flavone glycosides, terpene lactones, a composition comprising acetylcholinesterase, or the claimed amount or ratio of the components.

Loew teaches Ginkgo biloba special extract Egb 761 is a standardized and highly purified extract of Ginkgo leaves. Among the active constituents are the ginkgo-flavone glycosides and the terpene-lactones (ginkgolides, bilobalide). The presence of these constituents in Ginkgo extracts, which constituents are known to be useful for treating Alzheimer's disease, provides the rationale for clinical trials in vascular dementia and primary degenerative dementia of the Alzheimer's disease, and in mixed forms of both. In clinical trials of different working-groups, effects of Ginkgo biloba on the cognitive performance, global function, and activities of the daily living have been found. Metaanalysis in the indication—demential disorders--comparing Ginkgo biloba versus acetylcholinesterase inhibitors have shown a similar clinical efficacy of both therapy regimens with an additional drug safety benefit for Ginkgo. Loew further teaches that clinical trials with fixed combinations of acetylcholinesterase inhibitors with Ginkgo biloba extracts in moderate or severe demantia would be necessary (see Abstract).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the composition of Summers in a method of enhancement of cognitive function and reducing mental fatigue, and in the treatment of Alzheimer's disease since the composition yielded beneficial results in improving memory and cognitive abilities, and in the treatment of Alzheimer's disease.

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the ginkgo-flavone glycosides and the terpene-lactones (ginkgolides, bilobalide from Loew in the treatment of Alzheimer's disease, as Loew explicitly teaches Ginkgo biloba extract contains those components. It would have been *prima facie* obvious for one of

ordinary skill in the art to include acetylcholinesterase inhibitors in the composition since Loew teaches Ginkgo biloba has shown a similar clinical efficacy with acetylcholinesterase inhibitors, and clinical trials with fixed combinations of acetylcholinesterase inhibitors with Ginkgo biloba extracts in moderate or severe demantia would be necessary (see Abstract).

Regarding the limitation to the amount of the components, or the ratio of ginkgo and the phosphatidylserine in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. The differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). (Claimed process which was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was held to be prima facie obvious over a reference process which differed from the claims only in that the reference process was performed at a temperature of 100°C and an acid concentration of 10%.); see also Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382 ("The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum

combination of percentages."); In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969) (Claimed elastomeric polyurethanes which fell within the broad scope of the references were held to be unpatentable thereover because, among other reasons, there was no evidence of the criticality of the claimed ranges of molecular weight or molar proportions.). For more recent cases applying this principle, see Merck & Co. Inc. v. Biocraft Laboratories Inc., 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989); In re Kulling, 897 F.2d 1147, 14 USPQ2d 1056 (Fed. Cir. 1990); and In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997). see MPEP § 2144.05 part II A. Although the prior art did not specifically disclose the amounts of each constituent, it would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal concentrations of components because concentrations of the claimed components are art-recognized result effective variables because they have the ability for treating Alzheimer's disease, which would have been routinely determined and optimized in the pharmaceutical art.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QM

/Terry A. McKelvey/
Supervisory Patent Examiner, Art Unit 1655